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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Tracy Bergstrom on behalf of the statutory  
beneficiaries of her deceased husband  
George Bergstrom,

Plaintiffs,

v.

United States of America,

Defendant.

Civil Action No.

**COMPLAINT**

**COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT**

Through undersigned counsel, for her Complaint against Defendant the United States of America, Plaintiff Tracy Bergstrom (“Tracy”) alleges as follows:

**INTRODUCTION**

1. This is an action against the Defendant United States of America under the Federal Tort Claims Act, (28 U.S.C. §2671, et seq.) and 28 U.S.C. §1346(b)(1), for negligence, professional malpractice and wrongful death in connection with medical care provided to George Bergstrom (“George”), who is now deceased, by the Department of Veterans Affairs at the Prescott VA Medical Center.

2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, et seq.) and 28 U.S.C. §1346(b)(1), for money damages as compensation to George’s family as a result of his wrongful death, as caused directly by the Defendant's negligence.

3. Tracy and George had two minor sons, Dalton Bergstrom (“Dalton”) and

1 Marshall Bergstrom (“Marshall”). Tracy, Dalton, and Marshall have fully complied with  
2 the provisions of 28 U.S.C. § 2675 of the Federal Tort Claims Act. Tracy’s Standard Form  
3 95 is attached hereto as Exhibit “A”; Dalton’s Standard Form 95 is attached hereto as  
4 Exhibit “B”, and Marshall’s Standard Form 95 is attached hereto as Exhibit “C.” Each  
5 and every demand for relief contained in those Standard Form 95’s is hereby reasserted.

6 4. This suit has been timely filed, in that Tracy, Dalton, and Marshall, as  
7 George’s other statutory beneficiaries timely served notice of their claims of George’s  
8 wrongful death on both the Department of Veterans Affairs and the United States  
9 Department of Justice less than two years after the incident forming the basis of this suit.

10 5. Tracy, Dalton, and Marshall now file this Complaint pursuant to 28 U.S.C. §  
11 2401(b) with six months having passed since service of notice of their administrative  
12 claims for George’s wrongful death on the Department of Veterans Affairs, and the  
13 Department of Veterans Affairs having refused to compensate George’s surviving family  
14 members as they demanded.

15 6. This action is brought for wrongful death pursuant to A.R.S. §12-611 et seq.

16 **PARTIES, JURISDICTION AND VENUE**

17 7. George died on April 27, 2014

18 8. Tracy is George’s surviving wife; Dalton and Marshall are George’s two  
19 surviving sons.

20 9. Tracy, Dalton and Marshall (collectively, “the Bergstrom Family”) are  
21 George’s only surviving statutory beneficiaries pursuant to A.R.S. §12-612.

22 10. Tracy brings this action on behalf of all statutory beneficiaries pursuant to  
23 *Wilmot v. Wilmot*, 58 P.3d 507, 203 Ariz. 565 (2002).

24 11. At all times relevant, the Bergstrom Family members were residents of  
25 Maricopa County, Arizona.

26 12. Defendant United States of America, through its agency, the Department of  
27 Veterans Affairs, operates the Veterans Affairs Medical Center located at 500 AZ-89,  
28 Prescott, Arizona 86313.

17. Venue is proper under 28 U.S.C. §1402(b) in that all, or a substantial part of the acts and omissions forming the basis of these claims occurred in the District of Arizona.

24. In 2009, George's hepatitis C was in a treatable state such that providing this routine drug therapy likely would have arrested the disease's progression, and

1 George's life would have been extended by many years.

2 25. In 2009, the standard of care for treating hepatitis C also included  
3 conducting regular imaging studies, so the disease's progression could be monitored and  
4 the appropriate intervention timely provided.

5 26. The Prescott VA refused to provide George with these routine imaging  
6 studies.

7 27. Had such imaging studies been performed, George's care providers likely  
8 would have determined that surgical intervention was appropriate at a certain stage in the  
9 disease's progression; surgical intervention likely would have occurred; and George's life  
10 likely would have been extended by many years.

11 28. Instead of providing this routine, standard of care treatment and monitoring  
12 for George's hepatitis C in 2009, the Prescott VA refused to provide George with any  
13 actual treatment whatsoever for about three years.

14 30. Instead of providing these generally accepted drug therapies and monitoring  
15 for his hepatitis C, the Prescott VA instead promised George that when a new class of  
16 drugs was approved by the FDA, George would receive those drugs.

17 31. When the drugs finally received FDA approval in 2012, the Prescott VA  
18 advised George that he had grown too old to receive them.

19 32. Later in 2012, the Prescott VA finally saw fit to refer George to the Phoenix  
20 VA. Unfortunately, ultrasounds and other data confirmed that George's hepatitis C had  
21 advanced to where it was now untreatable either by drug therapy or surgical intervention.

22 33. George died from his untreated disease on April 27, 2014.

23 **CAUSES OF ACTION**

24 **COUNT I — NEGLIGENCE**

25 34. Tracy incorporates each and every allegation above as if fully set forth  
26 herein.

27 35. The Defendant had a duty to provide ordinary care, and to exercise that  
28 standard and degree of care and skill required of health care providers, consistent with the

1 expertise that the Defendant presented to the community at large.

2 36. The Defendant, through its agents and employees, breached its duty of care  
3 to George.

4 37. By failing to take appropriate steps to correctly and timely treat George's  
5 hepatitis C, including refusing to provide routine drug therapy and regular imaging  
6 studies, Defendant failed to exercise that degree of care, skill and learning expected of a  
7 reasonable, prudent healthcare provider in the profession or class to which he or she  
8 belongs within the state acting in the same or similar circumstances.

9 38. As a direct and proximate result of Defendant's failure to comply the  
10 standard of care, George died.

11 39. As a result of George's death, his wife and children, Tracy, Dalton and  
12 Marshall, have suffered the premature loss of their father and experienced overwhelming  
13 grief and sorrow.

14 40. The acts and/or omissions set forth above would constitute a claim under the  
15 law of the State of Arizona.

16 41. The Defendant is liable pursuant to 28 U.S.C. 1346(b)(1).

17 **COUNT II - VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,**  
18 **OSTENSIBLE AGENCY AND/OR AGENCY**

19 42. Tracy incorporates each and every allegation above as if fully set forth  
20 herein.

21 43. At all times relevant to this case, the directors, officers, operators,  
22 administrators, employees, agents, and staff were employed by and/or acting on behalf of  
23 the Defendant.

24 44. At all relevant times to this Complaint, the directors, officers, operators,  
25 administrators, employees, agents and staff acted within their respective capacities and  
26 scopes of employment for the Defendant.

27 45. The directors, officers, operators, administrators, employees, agents and  
28 staff negligently and/or recklessly, directly and proximately caused George's death,

1 including both acts of omission and acts of commission.

2 46. As a direct and proximate result of Defendant's negligence, George died.

3 47. As a direct and proximate result of Defendant's negligence, Tracy, Dalton,  
4 and Marshall were forced to watch their husband and father grow horribly sick and die.  
5 They have and continue to experience emotional distress, suffering and mental anguish, as  
6 well as a loss of the enjoyment of life as they mourn their loss.

7 48. The acts and/or omissions set forth above would constitute a claim under the  
8 law of the State of Maricopa.

9 49. The Defendant is liable pursuant to 28 U.S.C. 1346(b)(1).

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, on behalf of herself and her sons, Tracy hereby prays that  
12 judgment be entered in favor of Tracy, Dalton, and Marshall against the Defendant as  
13 follows:

- 14 1) For general damages for pain and suffering;  
15 2) For special damages for lost income as a result of George's untimely death;  
16 and  
17 3) For costs and attorneys' fees incurred in this civil action as they may be  
18 allowable by law, together with such further and additional relief at law or  
19 in equity that this Court may deem proper.

20 **RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of December, 2015.

21 **RICHARD D. LYONS, PLC**

22  
23 /s/ Richard D. Lyons

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